

UNITED STATES CODE OF FEDERAL REGULATIONS (50 CFR)

SUBPART A (Introduction and General Provisions)

222.101 Purpose and scope of regulations

(a) The regulations of parts 222, 223, and 224 of this chapter implement the Endangered Species Act (Act), and govern the taking, possession, transportation, sale, purchase, barter, exportation, importation of, and other requirements pertaining to wildlife and plants under the jurisdiction of the Secretary of Commerce and determined to be threatened or endangered pursuant to section 4(a) of the Act. These regulations are implemented by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce. This part pertains to general provisions and definitions. Specifically, parts 223 and 224 pertain to provisions to threatened species and endangered [[Page 78]] species, respectively. Part 226 enumerates designated critical habitat for endangered and threatened species. Certain of the endangered and threatened marine species enumerated in Secs. 224.102 and 223.102 are included in Appendix I or II to the Convention on International Trade of Endangered Species of Wild Fauna and Flora. The importation, exportation, and re-exportation of such species are subject to additional regulations set forth at 50 CFR part 23, chapter I.

(b) For rules and procedures relating to species determined to be threatened or endangered under the jurisdiction of the Secretary of the Interior, see 50 CFR parts 10 through 17. For rules and procedures relating to the general implementation of the Act jointly by the Departments of the Interior and Commerce and for certain species under the joint jurisdiction of both the Secretaries of the Interior and Commerce, see 50 CFR Chapter IV. Marine mammals listed as endangered or threatened and subject to these regulations may also be subject to additional requirements pursuant to the Marine Mammal Protection Act (for regulations implementing that act, see 50 CFR part 216).

(c) No statute or regulation of any state shall be construed to relieve a person from the restrictions, conditions, and requirements contained in parts 222, 223, and 224 of this chapter. In addition, nothing in parts 222, 223, and 224 of this chapter, including any permit issued pursuant thereto, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of any state or of the United States, including any applicable health, quarantine, agricultural, or customs laws or regulations, or any other National Marine Fisheries Service enforced statutes or regulations.

222.102 Definitions

Authorized officer means:

- (1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;
- (2) Any special agent or enforcement officer of the National Marine Fisheries Service;
- (3) Any officer designated by the head of a Federal or state agency that has entered into an agreement with the Secretary of Commerce or Commandant of the Coast Guard to enforce the provisions of the Act; or
- (4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect.

Harm in the definition of “take” in the Act means an act which actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding or sheltering.

SUBPART C (General Permit Procedures)

222.301 General requirements

(b) No person shall take, import, export, or engage in any other prohibited activity involving any species of fish or wildlife under the jurisdiction of the Secretary of Commerce that has been determined to be endangered under the Act, or that has been determined to be threatened and for which the prohibitions of section 9(a)(1) of the Act have been applied by regulation, without a valid permit issued pursuant to these regulations. The permit shall entitle the person to whom it is issued to engage in the activity specified in the permit, subject to the limitations of the Act and the regulations in parts 222, 223, and 224 of this chapter, for the period stated on the permit, unless sooner modified, suspended or revoked.

PART 224 - ENDANGERED MARINE AND ANADROMOUS SPECIES

224.103 Special prohibitions for endangered marine mammals

(a) Approaching humpback whales in Hawai'i. Except as provided in part 222, subpart C, of this chapter (General Permit Procedures) it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause to be committed, within 200 nautical miles (370.4km) of the Islands of Hawai'i, any of the following acts with respect to humpback whales (*Megaptera novaeangliae*):

- (1)** Operate any aircraft within 1,000 feet (300 m) of any humpback whale;
- (2)** Approach by any means, within 100 yards (90 m) of any humpback whale;
- (3)** Cause a vessel or other object to approach within 100 yards (90 m) of a humpback whale; or
- (4)** Disrupt the normal behavior or prior activity of a whale by any other act or omission. A disruption of normal behavior may be manifested by, among other actions on the part of the whale, a rapid change in direction or speed; escape tactics such as prolonged diving, underwater course changes, underwater exhalation or evasive swimming patterns; interruptions of breeding, nursing, or resting activities; attempts by a whale to shield a calf from a vessel or human observer by tail swishing or by other protective movement; or the abandonment of a previously frequented area.